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METALLIFEROUS MINERALS ON INDIAN RESERVATIONS

HEARINGS

BEFORE THE

S. Congress. Senate
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SIXTY-FOURTH CONGRESS
SECOND SESSION

ON

H. R. 12426

A BILL TO AUTHORIZE MINING FOR METALLIFEROUS
MINERALS ON INDIAN RESERVATIONS

Printed for the use of the Committee on Indian Affairs

DECEMBER 13 AND 16, 1916



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1916

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METALLIFEROUS METALS ON INDIAN RESERVATIONS.

WEDNESDAY, DECEMBER 13, 1916.

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS.

The committee met at 12 o'clock m. in the committee room, Capitol, for the purpose of considering the bill (H. R. 12426) to authorize mining for metalliferous minerals on Indian reservations.

Present: Messrs. Owen, Husting, Walsh, Clapp, La Follette, Fernald, Gronna, Curtis, and Henry F. Ashurst (chairman) presiding.

The CHAIRMAN. Representative Hayden, of Arizona, is present and desires to make a few remarks upon House bill 12426, to authorize mining for metalliferous metals on Indian reservations.

Mr. Hayden, the committee will be glad to hear you.

STATEMENT OF HON. CARL HAYDEN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA.

Mr. HAYDEN. Gentlemen of the committee, I do not desire to detain you any great length of time.

I have before you a bill which I succeeded in passing through the House at the last session of Congress to authorize mining for metalliferous metals on Indian reservations. As introduced it applied particularly to the State of Arizona, but the Department of the Interior was of the opinion that there was so much merit in the measure that it ought to be made applicable to all Indian reservations where metalliferous mining is possible. It is a general bill and therefore will probably require some discussion. I shall be very glad to explain its terms at the convenience of the committee. If you desire it done at this time I shall be glad to do so, but if you prefer to have the matter postponed to another day, I will be glad to conform to the convenience of the committee.

Senator OWEN. Mr. Chairman, I have myself an engagement which I have already deferred for some minutes in view of the fact that we have already held a meeting this morning on the Crow opening, and I very much regret that I can not remain. I would like to hear Mr. Hayden's argument. The general policy of the proposition seems to be entirely sound.

Senator CURTIS. I would like to have it go over until some future time.

The CHAIRMAN. What time does the Senator suggest? I would like to have a special day set, because we do not want Mr. Hayden to come here and have to wait.

Senator OWEN. I think it had better be done promptly if there is expectation of having action upon the bill.

Mr. HAYDEN. I could come to-morrow.

The CHAIRMAN. Will that be convenient to the committee or would it be better to set Saturday?

Senator CURTIS. I could come Saturday.

Senator CLAPP. I move that we hear Mr. Hayden on Saturday. I make that motion in order to have it in proper form.

(The motion was agreed to.)

Senator CLAPP. I move that the committee adjourn.

(The motion was agreed to, and the committee adjourned until Saturday, December 16, 1917, at 10.30 o'clock a. m.)

DECEMBER 16, 1916.

The committee met at 10.30 o'clock a. m. pursuant to adjournment.

Present: Senators Pittman, Owen, Fernald, Gronna, Curtis, and Ashurst (chairman), presiding.

The CHAIRMAN. The committee will come to order. Mr. Hayden, you may proceed with your statement.

STATEMENT OF HON. CARL HAYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA—Resumed.

Senator GRONNA. Mr. Hayden, before you proceed with your statement may I make this suggestion: I apprehend that it would incur the enmity of the Indians to go on to their reservation. They consider that it is their land and their property, and to permit the white man to go on there without any restrictions whatever to mine, it seems to me, might have a tendency to make them hostile to our people. As I understand it there is a provision in the bill—section 2—which provides that while we make this law it must meet with the approval of the Secretary of the Interior first. In other words, the law is of no effect until he shall designate the reservation or the particular land where these explorations may be made. Is that true?

Mr. HAYDEN. Yes, sir.

The CHAIRMAN. That is section 2.

Senator GRONNA. And another question that I want to ask is this: There may be cases in which the Indians may sustain a loss. Is there any provision in your bill for reimbursement or providing for payment to the Indians for any loss they may sustain?

Senator CURTIS. Or damages?

Senator GRONNA. I mean damages.

Mr. HAYDEN. No individual Indian could suffer any damage because mining operations are confined to the unallotted land.

Senator GRONNA. But there might be damage to them collectively.

The CHAIRMAN. For what?

Senator GRONNA. For any work that may be done by the miners. We always provide in the homestead bills that the prospectors may be allowed to go on to lands that are designated as coal lands and where the settlers have taken homesteads. We always provide that the homesteader shall be reimbursed for any damage that may be done to them by these prospectors. Now, it seems to me it would only be fair that the Indians collectively should be reimbursed for any damages that were done.

Mr. HAYDEN. Under the theory of this bill the prospector goes into the Indian country and locates a mining claim, the same as he would on the public domain, by filing his location notice in accordance with the mining laws, and also filing a copy of the same with the superintendent of the reservation. He has one year in which to apply for a lease. If he does not apply for a lease within one year his location is void. If he acquires a lease he must then pay a rental for the use of the land—25 cents, 50 cents, and \$1 an acre, etc.—and must do his assessment work as required under the mineral-land law. Having paid for the use of the land, which is unallotted land, it is hard for me to conceive why he should not use it, and how there could be any damage to the tribe collectively.

Senator GRONNA. It can be changed in this way: As I understand the law, the prospector or miner is permitted to take timber, any amount of timber that is necessary for him to carry on his operations. Now, I take it if there is timber, or if there should happen to be timber close by the mine, the miner would be allowed to take the timber free, and certainly the Indians ought to be paid for that timber.

Mr. HAYDEN. Yes.

Senator CURTIS. Out in your country there may be another proposition. They might have a very valuable spring that is supplying water for the Indians' sheep or cattle, and they might take that eighty and take that spring and deprive the Indians of water.

Mr. HAYDEN. There is a provision in the 640-acre grazing homestead bill which covers that situation, and it might be well to use similar language in this bill.

Senator GRONNA. I have no objection to the general provisions of the bill, but I desire, in so far as I can, to protect the interests of the Indians.

Mr. HAYDEN. I have provided in the next to the last section of this bill the following:

That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations not inconsistent with this act as may be necessary and proper for the protection of the interests of the Indians, and for the purpose of carrying the provisions of this act into full force and effect.

Now, whether that would be broad enough that when a man applied for a lease the Secretary, under that authority could say, "You must agree in this lease that you will not do damage to the Indians," or not, I do not know. It might be so construed, but there is a general provision for the surface entry of coal lands or other lands where the mineral is reserved to the United States, that the miner is compelled to compensate the homesteader for any damage done to him.

Senator CURTIS. There is a provision in the Osage act that any damage done in locating mineral, oil, gas, or other minerals shall pay to the member of the tribe any damage that may accrue on account of the putting in or operation of the well.

Mr. HAYDEN. You understand that this bill does not apply to lands belonging to individual Indians. Allotted lands are not subject to location at all.

Senator CURTIS. I know, but it belongs to the tribe, and I think you could add a provision to section 9:

That in addition to the payment of royalties and rentals as herein provided the lessee shall expend annually not less than \$100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States.

You might add:

And in addition thereto shall pay to any member of any tribe, or to the tribe any damage that may occur to the tribe or to the individual member thereof by reason of the location of such mine or claim—

Whatever you call it.

Mr. HAYDEN. I should be very glad, Senator, if we could find that provision in the Osage act. I shall also look for the provision in the public-land laws relating to mining where surface entries have been made. I do not believe there will be any difficulty in agreeing upon a proper amendment.

Senator PITTMAN. I would like to call attention to section 5 of this bill, on page 3. The section is as follows:

SEC. 5. That the Secretary of the Interior, in his discretion, in making any lease under this act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided*, That the said Secretary, during the life of the lease, is hereby authorized to issue such permits for easements herein provided to be reserved.

Mr. HAYDEN. That section is taken bodily from section 24 of the general leasing bill applying to coal, oil, gas, etc.

Senator PITTMAN. That section places it entirely within the power of the Secretary of the Interior to provide against taking timber off the land, because he can reserve the surface of the land, or the surface of this mining claim, so to speak, except where it is not necessary for the use of the lessee in extracting the mineral.

Senator CURTIS. The point I made a moment ago is this, that in some sections of that country the Indians depend upon some springs not located on their selections. Now, what if those mining people should make a selection of 80 acres, and include a spring that had been supplying water for these Indians for the cattle, they taking all the water for mining purposes and depriving them of the use of it? I think the Indians would be very materially damaged by the locations made in that way, especially in a country where water is the main thing for the maintenance of small herds.

Senator PITTMAN. I believe, under section 5 the Secretary of the Interior would have a right to reserve that spring.

Senator GRONNA. Of course, the water holes are of more value even than timber. It is almost like gold in some countries.

Senator PITTMAN. Of course, the intention of this bill is apparent. It is simply to permit, under the leasing system, the development of minerals, and that is all. They have followed the mining law, in so far as the marking out of it is concerned, and simply getting something definite in the amount of mineral.

Mr. HAYDEN. If the committee prefer, I shall be glad to go through the bill briefly, explaining its terms section by section, and stating where I obtained the language that is used, if that is agreeable to you gentlemen.

The first section of the bill is taken bodily from section 1 of House bill 408, the water-power bill now pending before the Senate. You will remember that in the last Congress and in this Congress, after extended hearings and after much debate, the House passed and sent to the Senate bills authorizing the establishment of a leasing system governing water power on the public domain, and for the mining of coal, oil, gas, potassium, sodium, and other minerals. As a member of the Public Lands Committee of the House I am familiar with these so-called conservation bills, and I will say that while there is much opposition in the country to the establishment of a leasing system on the public domain, I ascertained that never had Indian land been opened to mining under any other than the leasing system. While there may be a doubt in the minds of some people as to whether the minerals in the lands should have been given to the Indians, title has now passed to them under the Executive orders or treaties creating these reservations. The mineral lands are their property, and it is not the policy of Congress to dispose of the fee in such property at any time. It has never been done on any Indian reservation under any kind of a mining law. Therefore, we must adopt the leasing system.

Now if the leasing system, based on the best thought of the House in at least two Congresses, was satisfactory to water power and coal, oil, gas, etc., on the public domain, it seemed to me that we might take applicable provisions out of these two bills and make a bill applying to metalliferous minerals on Indian reservations. So I took the first section, as I say, from the water-power bill, which is merely a declaratory statement that certain lands may be leased.

The second section of the bill as originally drawn provided that all unallotted lands on Indian reservations should be open to prospecting. On the suggestion of the Department of the Interior that section was amended to the effect that only those unallotted lands should be opened to the prospector which the Secretary of the Interior might designate, in order to avoid the objection pointed out by Senator Gronna.

The remainder of the section I drew myself, and it is an application of the ordinary mining laws. We do not want to confuse the prospector. He is accustomed to going into the country and filing mining locations under the mining law. He knows how to do that; and if he follows the same system as is now provided under the mining laws, there will be no confusion about it. He will be permitted to enter unallotted lands designated by the Secretary of the Interior and locate his claim. He will file his location notice in the office of the county recorder in the usual way. In addition thereto, he is required to file a duplicate copy of it with the superintendent of the reservation in order that the authorities of the Indian Service may have notice.

The CHAIRMAN. I think that is very good.

Mr. HAYDEN. That gives him the right within one year from the date of filing the location notice to make application for a lease. If he does not apply for a lease within one year, his location is void and he acquires no rights at all.

Senator PITTMAN. That one year will give him time to see whether it is worth leasing or not, I imagine.

Mr. HAYDEN. And time to make his application, have it sent here to Washington and see if it is approved, and all that. I wanted to allow him ample time to satisfy himself, if he so desired, and for the department to take action on his application if made.

Senator PITTMAN. And they would have to send out and investigate it?

Mr. HAYDEN. Section 3—

Senator PITTMAN. One second, before we pass that. Do you understand that under section 2 the unallotted land must first be designated by the Secretary?

Mr. HAYDEN. Yes, sir.

Senator PITTMAN. The reason I wanted to know that is that if that section means that, then it also places it within the power of the Secretary to withhold from the operation of this bill any land upon which there is any spring, or any land which has a peculiar value beside in any other way, either timber or anything else. In other words, the Secretary must first designate the land that is subject to prospecting?

Mr. HAYDEN. Yes. This act is absolutely inoperative until the Secretary takes that positive action after its passage. It says that certain areas of any reservation, if in his judgment it may be proper, may be opened to prospecting.

Senator PITTMAN. What do you think of that, Senator Curtis? If the lands must first be classified and designated before being subject to prospecting, would not that put it within the power of the Secretary to withhold from prospecting any lands that had springs on it, or lands of any other peculiar value?

Senator CURTIS. I think it would. I think the language may be broadened a little bit so as to make it cover springs, or anything of that kind.

Senator PITTMAN. That is the intent of the language.

Senator CURTIS. If you will pardon me for going back, here is the provision I have reference to:

When any oil, coal, asphalt, or other mineral is hereafter opened on lands allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land, and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land by the lessee or party operating the same before operations begin.

Of course this is individual, but the language could be broadened to make it include the tribe, and you might very easily insert a section there to protect the interests of the Indians and simply add that the Secretary of the Interior is authorized to provide rules and regulations for carrying out the provisions of this section.

Senator PITTMAN. There is a general clause at the end of the bill that authorizes and directs the Secretary to make rules and regulations—

not inconsistent with this act as it may be necessary and proper for the protection of the interests of the Indians and for the purpose of carrying the provisions of this act into full force and effect.

That might refer back to anything that you put in prior to it.

The CHAIRMAN. Would the bill be satisfactory to you, Mr. Hayden, with the amendment suggested by Senator Curtis?

Mr. HAYDEN. Yes, sir.

The CHAIRMAN. Are there any further remarks? Mr. Brossius, do you want to be heard?

Mr. BROSSIUS. On this bill, Mr. Chairman; yes, sir.

Senator CURTIS. Mr. Chairman, I have not had time to read this report as yet, and before I pass any judgment on it I want to read it; and I may desire to ask some more questions with regard to it, if the chairman will excuse me at this time and proceed with the hearing.

Mr. HAYDEN. If you prefer, I can sketch through the bill briefly, as I started out to do, explaining it and showing where the language came from. The second section we discussed.

Senator PITTMAN. The second section is taken from the general leasing bill, is it not?

Mr. HAYDEN. No; the first part of the second section comes from an amendment suggested by the Department of the Interior. The latter part is an adaptation of the general mining law. The third section comes from the general leasing bill—from section 12 of that bill—except that as originally introduced in the House the term of the lease in this bill was 50 years, the same as is provided in the water-power bill. We thoroughly discussed the length of the term of the lease when we had the water-power bill up in the House, it being considered a business of some magnitude, in which large amounts of capital were likely to be invested, and also as a business entailing some risk. However, it was the judgment of the House that the term of the lease as provided in this bill should be reduced to 30 years, with the preferential right in the lessee, as provided in all of the other conservation bills, of renewal for successive periods of 10 years. A 30-year period, it seems to me, is short enough. If a miner makes a location he must not only have time to develop the mine but time to raise capital with which to develop it. I know of many mining prospects, as you also know, Senator, that have been held for 10, 15, or even 40 years, until this late date, when money has been more available or it has been possible by the construction of railroads to make the property accessible, before any profits were made. So it does not mean that if a lease is made that there will necessarily be a paying mine within the following year. Therefore it was agreed that 30 years was a fair term for a mining lease.

Senator CURTIS. Following that up with section 9, I had not noticed that 50-year provision; I had not gotten that far. I had read to section 9 and was trying to find some place to suggest an amendment. With regard to this section 9, which requires that not less than \$100 a year in the development of a mining claim shall be expended, is that sufficient to protect the interests of the Indians? I do not know anything about minerals, and that is why I ask the question. It may sound foolish to you people.

Senator PITTMAN. I do not think it would if taken in connection with section 8. Section 8 requires a flat rental, you see.

Senator CURTIS. I have not read that.

Senator PITTMAN. It provides for—

an annual rental, payable at the date of such lease and annually thereafter on the area covered by such lease, at the rate of 25 cents per acre for the first calendar year thereafter; 50 cents per acre for the second, third, fourth, and fifth years, respectively, and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

The CHAIRMAN. That would make a drone get to work.

Senator CURTIS. Would that be sufficient?

The CHAIRMAN. I think so.

Senator PITTMAN. They have adopted that provision in the Alaskan coal-leasing bill, and they have put it in the general leasing bill. That subject was discussed very fully as to what would be a reasonable flat rental in addition to royalties.

Mr. HAYDEN. This term has been reduced from 50 years to 30 years.

Senator CURTIS. Well, that is long enough.

Senator PITTMAN. Then, there is another proposition, and that is that this contains a provision similar to our ordinary mining laws out there—that is, that the property shall be operated with diligence.

Senator CURTIS. What have they held in your country as a reasonable length of time for forfeiture under that? What do they hold as a reasonable length of time? As to the oil proposition, they hold a year in a number of cases that I happened to look up; that if the parties fail for a year it was virtually an abandonment. What have they held in mining?

Senator PITTMAN. I do not know of cases in mining where they have ever permitted a cessation of operations in our State—that is, of metal mining—for that length of time. There have been disputes, where they have ceased to operate for 30 or 60 days, and under any circumstances, when we used the words “shall be operated with diligence and in a minerlike manner,” they must make a showing to the courts and get an excuse for the cessation in an action brought to forfeit the lease.

Senator CURTIS. The court takes in all the circumstances and conditions of the case.

Senator PITTMAN. Yes; and there might be the condition of a spring and there might be a condition of cessation of transportation that they have been counting on. It may be impossible to get acids to take the stuff out of the ore with. In those cases it comes right down to a question of equity in the court. It is purely an equity case. The action is brought by the owner of the mining company to cancel the lease on the ground of failure to comply with the terms of the lease—that is a forfeiture. One of the terms if every lease granted to private individuals out there is that the property shall be operated with due diligence and in a minerlike manner.

Mr. HAYDEN. As the Senator from Nevada has stated, in the Alaskan coal-leasing bill, and in the general leasing bill relating to coal, oil, phosphate, potassium, and sodium, there is a provision that there shall be a flat rental paid per acre. But I thought in addition to a rental that there should be this requirement of \$100 worth of work a year to insure development. It is for this reason that a miner is expected to do his annual assessment work. So we have put in here more than is required under the other conservation bills.

Now, the fourth section provides that there may be leased not exceeding 80 acres of land, in addition to the areas used for mining, for camp sites, milling, smelting, refining works, etc. That is taken bodily from section 20 of the general leasing bill.

The fifth section——

Senator GRONNA. Just one moment. That is a very important section. That might permit the taking of water power, water holes, and springs, if I read it correctly. It provides:

SEC. 4. That in addition to areas of mineral land to be included in leases under this act the Secretary of the Interior, in his discretion, may grant to the lessee the right to use, during the life of the lease, a tract of unoccupied land, not exceeding eighty acres in area, for camp sites, milling, smelting, and refining works, and for other purposes connected with and necessary to the proper development and use of the deposits covered by the lease.

That would, as Senator Curtis said a moment ago, at least empower the Secretary of the Interior to lease any water power, or would let them take any spring or any water hole that might be on this particular land. That, of course, might deprive the Indians entirely, and would deprive them of the use of it.

MR. HAYDEN. On the other hand, if a man has a mining claim on a steep mountainside, where it is impossible to locate a mill, he must have some place on which he can put the machinery to crush the rock and reduce it to a state where it can be smelted or prepared for shipment. It is, therefore, necessary that some provision be made for the ground on which to do that work. Otherwise the mining claim would be useless to anyone. If you have ever been in a rough, mountainous country, where mining is carried on, you will understand that it is impossible in a good many cases to do any milling or smelting on the ground where the ore is produced. It has to be carried elsewhere. We often see tramways, and sometimes narrow-gauge railroads, so that the ore may be moved to a place where it can be treated.

As I say, that provision occurs in the general leasing bill, and I took it bodily from that bill. It seems to me that it is necessary to have such a provision. But we can take into consideration Senator Curtis's suggestion elsewhere in the bill, substantially directing the Secretary to protect the water holes or other rights of the Indians. Even as the bill now reads it is within his discretion, you understand.

Section 4 provides:

That in addition to areas of mineral land to be included in leases under this act the Secretary of the Interior, in his discretion, may grant, etc.

In his discretion he may lease additional areas for mill sites, etc., but it is possible that where a man has a claim on flat land that he would not need a mill site, and then the Secretary would not have to exercise his discretion.

Section 5 has been discussed by Senator Pittman with respect to reserving the surface where it is not necessary for the use of the lessee for the purpose of mining. I think it is perfectly proper that that should be done. Very often the Indians might obtain considerable revenue from this source. For instance, if a mining camp grew up the Secretary could lease the surface for business purposes, residences, etc. That would bring the Indians in quite an income, and there is no reason why they should not have it. That is often done by mining companies that own private property.

Section 6 binds any successor in interest or assignee of the lessee to the terms of the lease. That is taken word for word from section 4 of the water-power bill (H. R. 408) as reported to the Senate.

Section 7 was taken from section 12 of the water-power bill, and there is an almost identical provision in section 26 of the general leasing bill. This section reads as follows:

SEC. 7. That any lease granted under this act may be forfeited and canceled by appropriate proceedings in the United States district court for the district in which said property or some parts thereof is situated whenever the lessee, after reasonable notice in writing, as prescribed in the lease, shall fail to comply with the terms of this act or with such conditions not inconsistent herewith as may be specifically recited in the lease.

That is the method of forfeiting a lease and is self-explanatory.

Section 8 is the royalty section, providing that a royalty, which shall not be less than 5 per cent, shall be charged, and that until there is a production of values there shall be a rental of 25 cents an acre for the first calendar year thereafter and 50 cents per year for the second; third, fourth, and fifth years, respectively, and \$1 per acre for each and every year thereafter during the continuance of the lease, "except that such rental for any year shall be credited against the royalties as they accrue for that year." That provision, as I have just stated, was taken from section 16 of the general leasing bill.

Mr. BROSSIUS. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BROSSIUS. It is provided in section 8, that has just been read, that the royalty shall not be less than 5 per cent of gross value. That, as I understand it, is in the discretion of the Secretary of the Interior. The point I make is that at first reading you might think it could not be less than 5 per cent, and that is Mr. Hayden's idea, but here it is in the discretion of the Secretary, as I understand the language.

The CHAIRMAN. Suppose we strike out the words "in the discretion of the Secretary of the Interior," and say "shall not be less than five per centum." Then the Secretary should have authority to increase the amount.

Mr. HAYDEN. I think that follows. The bill as originally introduced provided for a flat rate, but it was amended in the House by Mr. Stafford by inserting the words "in the discretion of the Secretary of the Interior." I believe there is merit in what Mr. Brossius has said. That phrase should be stricken out.

Senator GRONNA. Beginning with the word "privilege"?

Mr. HAYDEN. No; the words "in the discretion of the Secretary of the Interior."

The CHAIRMAN. Those words will be stricken out, without objection.

Mr. HAYDEN. Section 9 provides that in addition to the payment of the royalties and rentals the lessee shall expend annually not less than \$100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States.

Section 10——

The CHAIRMAN. Is an inquisitorial power.

Mr. HAYDEN. It is taken directly from section 11 of the water-power bill and authorizes the Secretary of the Interior to look into

the books of the lessees so that it can be ascertained whether they are paying what they ought to pay.

Section 11 provides that moneys received from royalties and rentals shall be deposited in the Treasury to the credit of the Indians, subject to such disposition as Congress may make. That is in the usual form.

Section 12 is taken without change from section 13 of the general leasing bill, except that the Secretary of the Interior is given additional authority to protect the interests of the Indians. It provides that the Secretary is authorized to make rules and regulations to carry out this act, and a proviso is added—

that nothing in this act shall be construed or held to affect the right of the State or other local authority to exercise any rights which they may have to levy and collect taxes on improvements, output of mines, or other rights, property, or assets of any lessee.

Senator CURTIS. But you give them no authority to take land.

Mr. HAYDEN. No. Section 13 was inserted at the request of the Hon. C. D. Carter, of Oklahoma, and is to the effect that this act should not apply to the Five Civilized Tribes or the Osages because there are no metalliferous minerals in that country, and he was afraid it might conflict with the laws relating to coal or other minerals.

Now, there is one other suggestion that has been made by Mr. Brossius that seems to have merit in it. I am personally acquainted with a number of Indians in Arizona, graduates of our Indian schools, and some of them graduates of Carlisle, who have come to me at different times, saying, "We know of places on our reservation that mining could be carried on, and we would like to have the right to mine." I have taken the matter up with the Indian Office and they say, "No; you are an Indian and can not mine on your own land or anywhere else; you can not get a mining claim."

It is Mr. Brossius's idea that if possible there should be inserted in this bill a provision as follows:

Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to mine and manage their own affairs shall be given authority to mine; and also all Indians whom the Secretary of the Interior may authorize to make filings on mineral lands under this act in accordance with the rules and regulations to be prescribed by him.

This is a rather difficult matter to handle, for the reason that there are incompetent Indians, Indians that the department does not trust to handle their own property, even a little agricultural allotment, and there would be no advantage in giving that kind of an Indian the right to acquire property which he could dispose of as he sees fit. But there ought to be, on the other hand, some inducement held out to progressive Indians, who are competent to do their own business, to take a mining claim on their own reservation, at least. I have been trying to prepare some language that I thought would cover that point.

Mr. BROSSIUS. Mr. Chairman, we found in the Indian hearings, or at least the department has found, that competent Indians, when they become quite competent, do not wish certificates of competency to be declared citizens, because they are sharp enough to see that they will then be subject to taxation.

The CHAIRMAN. They would not be required to be declared competent as citizens.

Mr. BROSSIUS. No; but the point is that here would be an inducement to ask for a competency certificate, if they can get the right to mine.

The CHAIRMAN. The question is, Shall the Indians who may be declared competent, and who also take advantage of this act, carry on metalliferous mining?

Senator OWEN. I think they ought to be, whether they are competent or not competent. Why should not an incompetent Indian ask for the right to mine?

Mr. HAYDEN. For the same reason that a white child who is 12 years of age should not be given the right to locate a mining claim on the public domain. They are both incompetent.

Senator GRONNA. I have found during the hearings since I have been on this committee that we have had hearings on this subject that nearly all of these Indians are incompetent, men with just as much business ability as any man on this committee.

Senator OWEN. I do not see why they should not apply for that right.

Senator GRONNA. As I say, they are men of just as much business ability as any man on this committee, and yet I notice they are not declared by law to be competent, while they are in reality competent.

Senator OWEN. It is very hard to get competency declared in the Indian Office. I know people who are perfectly white and reasonably well educated who have been denied competency by the Indian Office.

Senator GRONNA. My idea is that every Indian ought to have the right and preference in the right of mining.

Senator OWEN. I think so, too. There is one suggestion that I would like to make in connection with this matter, and that is that probably some very well-known mines are already unknown on these properties. It seems to me that it should not be merely a race of diligence for a preferential right, but that those that are already known should be open to bidding. Would not that be right? Is there any reason why that should not be done?

Senator GRONNA. I think that is right. It is the Indians' property.

Senator OWEN. Is there any reason to be suggested against that proposition? I think diligence should be encouraged, but where it is well known that there are available mining properties it seems to me those Indians who have property that is known should not be subjected to a race of diligence as between those who have already applied for it, where the shrewdest and sharpest fellow will come in and take advantage of them.

Mr. HAYDEN. Would it be your idea, Senator, to have the Secretary of the Interior designate certain known mineral areas and have that particular land opened by bidding?

Senator OWEN. I would suggest that he make it known; that those properties that are already known to be of mineral value might be designated by any person and then subject to being let. But subsequent to that time I think diligence is all right.

Mr. HAYDEN. I know of but one case of that kind in my State, and that was brought to my attention by an Indian. He said that he knew of a place where there was what they called an *antigua*. That is, that years ago the old Spaniards had worked *arrastras* in getting

out some gold, and he wanted the right to work the place. He could not get permission under existing law because he was an Indian. No white man could go in there, either. It was simply tied up. From what he said it is a small free gold vein where he could do mining in a very simple way.

Senator GRONNA. I would like to call attention to the fact that it might be well to protect the Indians' interest and not allow the water holes and springs and water power to be taken without compensation.

Senator OWEN. I think that is quite right. I think it would be right to safeguard that.

Mr. HAYDEN. The suggestion that Mr. Brossius made about this matter, authorizing the Indians to locate mining claims and obtain leases, appeals to me and to him, just as it does to Senator Owen, on first thought, but I do not see exactly what you are going to have as an outcome if you allow every Indian on every reservation to go out and make locations everywhere and acquire the right to property which he can dispose of without any kind of a restriction at all.

Senator CURTIS. That can be covered very easily by saying that members of the Indian tribes may be permitted, or are hereby permitted, to make selections under the rules and regulations prescribed by the Secretary of the Interior, and in those rules you could provide that the Indians who were incompetent to handle their own affairs might make these selections, and then provide the manner in which they should be developed. If an Indian knows of a valuable mine he ought to have at least some benefit from it and not give it to somebody else, and where the Indian is competent the Secretary should provide that he could go ahead and be permitted to mine and do with his property as he pleased.

Mr. HAYDEN. You and Mr. Brossius are practically in accord. Mr. Brossius proposes dividing the Indians into two classes—the Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to manage their own affairs and do the same as a white man——

Senator CURTIS. Yes; just as they buy a horse or a cow.

Mr. HAYDEN. And also all other Indians whom the Secretary of the Interior may authorize to make filings on mineral lands under this act in accordance with the rules and regulations to be prescribed by him. They are divided into two classes in that way.

Mr. BROSSIUS. The first class not subject to the Secretary's orders, the same as citizens of the United States. They are to be divided according to ability, but I think that might be extended according to the Senator's suggestion.

Mr. HAYDEN. Your ideas are fundamentally the same.

Senator CURTIS. I know of one Indian—I do not know what he has got—who came here to Washington a number of years ago and said he knew of very valuable coal land on their reservation and went on to describe what it was. The mineral laws did not apply and he would not tell anyone else. He said he did not intend to tell them until that land was opened up and he was going to try to get it for himself; if it was subject to rental that an Indian ought to have the right to rent that property.

Senator PITTMAN. Coal is not included in this bill.

Senator CURTIS. No; but I am using that to illustrate the matter. If it is opened up in his country he ought to have the right to it if he found it years ago. If he is able to do so and can do so, he ought to be permitted to go on it and develop it when it is opened.

Senator PITTMAN. The Indians, some of them, are quite skillful prospectors.

Senator CURTIS. They claim that in Utah they had quite a number of Indians who were very adept in discovering minerals.

Mr. HAYDEN. I do not think it is the desire of anybody to prevent the development of any mining property.

Senator CURTIS. Why could you not, following the suggestions that have been made here, prepare the two or three amendments that have been suggested and submit them with your bill, and when there are a sufficient number of the members of the committee present we can pass upon them—probably at the meeting on Monday, Mr. Chairman, could we not?

The CHAIRMAN. We could appoint a subcommittee to cooperate with Mr. Hayden and get it drafted this afternoon. When we proceed to the consideration of the Indian appropriation bill it is difficult to interrupt the course of that bill.

Mr. HAYDEN. I shall be very glad to render any assistance that I can in that regard, Mr. Chairman.

The CHAIRMAN. Suppose you and Senator Curtis and Senator Gronna get together as a committee to consider the bill.

Senator CURTIS. I would rather somebody else should serve on the committee and let me look at it afterwards. I have many pressing engagements this afternoon.

Senator GRONNA. Suppose you appoint Senator Pittman on the committee, as he is very well versed in mining laws.

The CHAIRMAN. Very well; you can prepare it and submit it to Senator Curtis, Senator Pittman, and Senator Fernald.

Senator GRONNA. I would be glad to act, but Senator Pittman is more capable than I.

The CHAIRMAN. You may prepare several copies of the amendments that are suggested.

Senator PITTMAN. I think that will be a good idea. There should be made a memorandum of the points that you want to cover.

Mr. HAYDEN. I think so. One is the question of protecting the water holes—

Senator CURTIS. And damages of all kinds.

Mr. HAYDEN. Yes; damages generally.

Senator GRONNA. And water power.

Senator CURTIS. I move that the committee now adjourn.

(The bill as reported to the Senate is as follows:)

[Omit the part struck through and insert the part printed in italic.]

AN ACT To authorize mining for metalliferous minerals on Indian reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him and under such terms and conditions as he may prescribe, not inconsistent with the terms of this act, to lease to citizens of the United States or to any association of such persons or to any corporation organized under the laws of the United States or of any State or Territory thereof, any part of the

unallotted lands within any Indian reservation heretofore withdrawn from entry under the mining laws for the purpose of mining for deposits of gold, silver, copper, and other valuable metalliferous minerals, which leases shall be irrevocable, except as herein provided, but which may be declared null and void upon breach of any of their terms.

SEC. 2. That after the passage and approval of this act unallotted lands within Indian reservations heretofore withheld from disposition under the mining laws may be declared by the Secretary of the Interior to be subject to exploration for and discovery of deposits of gold, silver, copper, and other valuable metalliferous minerals by citizens of the United States, and after such declaration mining claims may be located by such citizens in the same manner as mining claims are located under the mining laws of the United States: *Provided, That the locators of all such mining claims, or their heirs, successors, or assigns, shall have a preference right to apply to the Secretary of the Interior for a lease, under the terms and conditions of this act, within one year after the date of the location of any mining claim, and any such locator who shall fail to apply for a lease within one year from the date of location shall forfeit all rights to such mining claim: Provided further, That duplicate copies of the location notice shall be filed within sixty days with the superintendent in charge of the reservation on which the mining claim is located, and that application for a lease under this act may be filed with such superintendent for transmission through official channels to the Secretary of the Interior: And provided further, That lands containing springs, water holes, or other bodies of water needed or used by the Indians for watering live stock, irrigation, or water-power purposes shall not be designated by the Secretary of the Interior as subject to entry under this act.*

SEC. 3. That leases under this act shall be for a period of thirty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods: *Provided, That the lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease and upon acceptance thereof be thereby relieved of all future obligations under said lease.*

SEC. 4. That in addition to areas of mineral land to be included in leases under this act the Secretary of the Interior, in his discretion, may grant to the lessee the right to use, during the life of the lease, a tract of unoccupied land, not exceeding eighty acres in area, for camp sites, milling, smelting, and refining works, and for other purposes connected with and necessary to the proper development and use of the deposits covered by the lease.

SEC. 5. That the Secretary of the Interior, in his discretion, in making any lease under this act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided, That the said Secretary, during the life of the lease, is hereby authorized to issue such permits for easements herein provided to be reserved.*

SEC. 6. That any successor in interest or assignee of any lease granted under this act, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the approval under which such rights are held and also subject to all the provisions and conditions of this act to the same extent as though such successor or assign were the original lessee hereunder.

SEC. 7. That any lease granted under this act may be forfeited and canceled by appropriate proceedings in the United States district court for the district in which said property or some part thereof is situated whenever the lessee, after reasonable notice in writing, as prescribed in the lease, shall fail to comply with the terms of this act or with such conditions not inconsistent herewith as may be specifically recited in the lease.

SEC. 8. That for the privilege of mining or extracting the mineral deposits in the ground covered by the lease the lessee shall pay to the United States, for the benefit of the Indians, a royalty which, ~~in the discretion of the Secretary of the Interior,~~ shall not be less than five per centum of the gross value of the output of the minerals at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine, and an annual rental, payable at the date of such lease and annually thereafter

on the area covered by such lease, at the rate of 25 cents per acre for the first calendar year thereafter; 50 cents per acre for the second, third, fourth, and fifth years, respectively; and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

SEC. 9. That in addition to the payment of the royalties and rentals as herein provided the lessee shall expend annually not less than \$100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States *Provided, That the lessee shall also agree to pay all damages occasioned by reason of his mining operations to the land or allotment of any Indian or to the crops or improvements thereon: And provided further, That no timber shall be cut upon the reservation by the lessee except after first obtaining a permit from the superintendent of the reservation and upon payment of the fair value thereof.*

SEC. 10. That the Secretary of the Interior is hereby authorized to examine the books and accounts of lessees and to require them to submit statements, representations, or reports, including information as to cost of mining, all of which statements, representations, or reports so required shall be upon oath, unless otherwise specified, and in such form and upon such blanks as the Secretary of the Interior may require; and any person making any false statement, representation, or report under oath shall be subject to punishment as for perjury.

SEC. 11. That all moneys received from royalties and rentals under the provisions of this act shall be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the reservation where the leased land is located, which moneys shall be at all times subject to appropriation by Congress for their education, support, and civilization.

SEC. 12. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations not inconsistent with this act as may be necessary and proper for the production of the interests of the Indians and for the purpose of carrying the provisions of this act into full force and effect: *Provided, That nothing in this act shall be construed or held to effect the right of the State or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee.*

SEC. 13. *That mining locations, under the terms of this act, may be made on unallotted lands within Indian reservations by Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to manage their own affairs; and the said Secretary is hereby authorized and empowered to lease such lands to such Indians in accordance with the provisions of this act: Provided, That the Secretary of the Interior be, and he is hereby, authorized to permit other Indians to make locations and obtain leases under the provisions of this act, under such rules and regulations as he may prescribe in regard to the working, developing, disposition, and selling of the products, and the disposition of the proceeds thereof of any such mine by such Indians.*

SEC. ~~13~~ 14. That the provisions of this act shall not apply to the Five Civilized Tribes and Osage Nation of Indians in Oklahoma.





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